

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RANDY KYLE CHAPPELL,

v.

NETHANJAH BREITENBACH,

Respondents.

Case No. 3:25-cv-00060-ART-CSD

APPOINTMENT AND
SCHEDULING ORDER

On February 4, 2025, this Court granted Petitioner Randy Kyle Chappell's motion for appointment of counsel, provisionally appointed the Federal Public Defender to represent Chappell, and gave the Federal Public Defender 30 days to (1) undertake direct representation of Chappell by filing a notice of appearance or (2) indicate the office's inability to represent Chappell in these proceedings. (ECF No. 3.) On March 3, 2025, the Federal Public Defender timely filed their notice of appearance. (ECF No. 6.)

It is ordered that the Federal Public Defender, through Kimberly Sandberg, Esq., is appointed as counsel for Chappell pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent Chappell in all federal proceedings related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

It is further ordered that Chappell shall have until up to and including 90 days from entry of this Order within which to file an amended petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during the time period established. Chappell remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any

1 deadlines established or extensions granted herein. That is, by setting a deadline
2 to amend the petition and/or by granting any extension thereof, the Court makes
3 no finding or representation that the petition, any amendments thereto, and/or
4 any claims contained therein are not subject to dismissal as untimely. *See Sossa*
5 *v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

6 It is further ordered that Respondents shall file a response to the amended
7 petition, including potentially by motion to dismiss, within 60 days of service of
8 the amended petition and that Chappell may file a reply thereto within 30 days
9 of service of the answer. The response and reply time to any motion filed by either
10 party, including a motion to dismiss, shall be governed instead by Local Rule LR
11 7-2(b).

12 It is further ordered that any procedural defenses raised by Respondents
13 to the counseled amended petition shall be raised together in a single
14 consolidated motion to dismiss. In other words, the Court does not wish to
15 address any procedural defenses raised herein either in seriatum fashion in
16 multiple successive motions to dismiss or embedded in the answer. Procedural
17 defenses omitted from such motion to dismiss will be subject to potential
18 waiver. Respondents shall not file a response in this case that consolidates their
19 procedural defenses, if any, with their response on the merits, except pursuant
20 to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
21 Respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they
22 shall do so within the single motion to dismiss not in the answer; and (b) they
23 shall specifically direct their argument to the standard for dismissal under §
24 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In
25 short, no procedural defenses, including exhaustion, shall be included with the
26 merits in an answer. All procedural defenses, including exhaustion, instead must
27 be raised by motion to dismiss.

28 It is further ordered that, in any answer filed on the merits, Respondents

1 shall specifically cite to and address the applicable state court written decision
2 and state court record materials, if any, regarding each claim within the response
3 as to that claim.

4 It is further ordered that any state court record and related exhibits filed
5 herein by either Chappell or Respondents shall be filed with a separate index of
6 exhibits identifying the exhibits by number. The CM/ECF attachments that are
7 filed further shall be identified by the number or numbers of the exhibits in the
8 attachment. If the exhibits filed will span more than one ECF Number in the
9 record, the first document under each successive ECF Number shall be either
10 another copy of the index, a volume cover page, or some other document serving
11 as a filler, so that each exhibit under the ECF Number thereafter will be listed
12 under an attachment number (i.e., Attachment 1, 2, etc.).

13 It is further ordered that courtesy copies of exhibits shall not be provided.

14 It is further ordered that the motion for leave to proceed *in forma pauperis*
15 (ECF No. 1) is granted.¹

16 DATED THIS 14th day of March 2025.

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20 ANNE R. TRAUM
21 UNITED STATES DISTRICT JUDGE
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27 ¹ Upon inspection, although this Court found good cause existed to grant
28 Chappell's *in forma pauperis* application within the discussion portion of its
previous Order, it neglected to grant the motion within the conclusion section of
the Order. (ECF No. 3.)